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Supreme Court of the United States

OCTOBER TERM, 1958

No. 525

ARNOLD WILLIAM LEIFER,
GEORGE FREDERICK CARNES
and JOHN HENRY McFARLAND, Petitioners

v.

UNITED STATES OF AMERICA

Joint Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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Joint Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Sixth Circuit affirming the judgments of conviction of Leifer by the United States District Court for the Northern District of Ohio, Eastern Division, and of Carnes and McFarland by the United States District Court for the Eastern District of Kentucky, for violation

of the Universal Military Training and Service Act and sentencing each to the custody of the Attorney General.

OPINIONS BELOW

The Court of Appeals filed no written opinion in any of these cases. The judgments containing the reasons for affirmance in the cases are printed as Appendices A, B and C to this petition, *infra*, pages 37-40.

JURISDICTION

The judgments of the Court of Appeals were entered on October 22, 1958. (See Appendices A, B and C, *infra*, pages 37-40.) The time for filing this petition expires November 21, 1958. This petition for writ of certiorari is filed within said time. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1). (See also Rules 37(b) (2) and 45(a), Federal Rules of Criminal Procedure.) The district courts had jurisdiction under 18 U. S. C. § 3231.

QUESTIONS PRESENTED

I.

Whether the denial of the conscientious objector classification by the appeal board in each case was without basis in fact, making the final I-A classification arbitrary and capricious.

II.

Whether the final recommendations of the Department of Justice that the petitioners Leifer and McFarland be denied the full conscientious objector classification but be classified I-A-O because one of the bases of conscientious objection of each was that military service would interfere with his ministry, make the final orders void because the recommendations were arbitrary, capricious, contrary to law, misrepresentations of fact, immaterial and irrelevant.

III.

Whether in each case the order quashing the subpoena *duces tecum* illegally denied the right to use the FBI report upon the trial to prove that each petitioner had been denied procedural due process of law before the appeal board through the omission and withholding of favorable evidence supporting the full conscientious objector claim appearing in the report that was not summarized by the Department of Justice and the résumé sent to the appeal board along with the recommendation, contrary to the Fifth Amendment to the Constitution.

STATUTES AND REGULATIONS INVOLVED

Section 6 (j) of the Universal Military Training and Service Act (62 Stat. 604, 612, 622; 65 Stat. 75, 86 (50 U. S. C. App. § 456 (j))) is involved here. The pertinent part reads as follows:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service,